

## CONFERENCE COMMITTEE REPORT DIGEST FOR ESB 171

**Citations Affected:** IC 27-4-1-4; IC 27-4-9.

**Synopsis:** Insurance product sales. Provides that engaging in certain dishonest or predatory insurance practices in marketing or sales of insurance to members of the United States armed forces constitutes an unfair and deceptive act and practice in the business of insurance. Allows the insurance commissioner to adopt rules to define and protect members of the United States armed forces from dishonest or predatory insurance practices. Makes the law concerning annuity purchase or exchange recommendations made to senior consumers apply to all consumers and requires the department of insurance to adopt rules to implement the law. **(This conference committee report removes provisions that would do the following: (a) Provide that the department of insurance sets the amount charged for copies of medical records. (b) Establish the insurance education scholarship fund and make an annual appropriation. (c) Make changes to insurance filing fees and deposit certain fees into the department of insurance fund rather than the state general fund. (d) Specify requirements for assets in a segregated investment account for a funding agreement. (e) Require an insurer to provide written notice to a property insurance policyholder of certain changes to a policy and prohibit issuance of a policy that specifies certain limits on a policyholder's right of action. (f) Authorize the commissioner to issue certificates suitable for framing to insurance producers. (g) Specify requirements for insurance producer fees related to personal property and casualty insurance. (h) Change insurance producer license renewal periods and continuing education requirements. (i) Make certain changes to filing and notice requirements that apply to commercial property and casualty insurance. (j) Provide for the entry of an unauthorized alien insurance company to transact business in the United States through a United States branch. (k) Amend mandated benefit statutes defining an "accident and sickness" policy to standardize the list of the types of policies that are not included in the use of the term. (l) Make changes to statutes concerning accident and sickness insurance policies, travel accident policies, short term health policies, and long term care insurance producer compensation, including changes to preexisting condition limitation periods, claim payment requirements, policy return periods, and information from independent review organizations. (m) Remove the requirement that resident surplus lines producers file a bond with the commissioner. (n) Establish an interim study committee to create a**

**definition of "health insurance" for purposes of the law concerning accident and sickness insurance and health maintenance organization contracts. (o) Require the office of Medicaid policy and planning (office) to develop certain demonstration and pilot projects.)**

**Effective:** January 1, 2008.

Adopted

Rejected

## CONFERENCE COMMITTEE REPORT

**MR. SPEAKER:**

*Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill No. 171 respectfully reports that said two committees have conferred and agreed as follows to wit:*

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 27-4-1-4, AS AMENDED BY P.L.1-2006,
- 3 SECTION 487, IS AMENDED TO READ AS FOLLOWS
- 4 [EFFECTIVE JANUARY 1, 2008]: Sec. 4. (a) The following are
- 5 hereby defined as unfair methods of competition and unfair and
- 6 deceptive acts and practices in the business of insurance:
- 7 (1) Making, issuing, circulating, or causing to be made, issued, or
- 8 circulated, any estimate, illustration, circular, or statement:
- 9 (A) misrepresenting the terms of any policy issued or to be
- 10 issued or the benefits or advantages promised thereby or the
- 11 dividends or share of the surplus to be received thereon;
- 12 (B) making any false or misleading statement as to the
- 13 dividends or share of surplus previously paid on similar
- 14 policies;
- 15 (C) making any misleading representation or any
- 16 misrepresentation as to the financial condition of any insurer,
- 17 or as to the legal reserve system upon which any life insurer
- 18 operates;
- 19 (D) using any name or title of any policy or class of policies
- 20 misrepresenting the true nature thereof; or
- 21 (E) making any misrepresentation to any policyholder insured
- 22 in any company for the purpose of inducing or tending to

- 1 induce such policyholder to lapse, forfeit, or surrender the  
2 policyholder's insurance.
- 3 (2) Making, publishing, disseminating, circulating, or placing  
4 before the public, or causing, directly or indirectly, to be made,  
5 published, disseminated, circulated, or placed before the public,  
6 in a newspaper, magazine, or other publication, or in the form of  
7 a notice, circular, pamphlet, letter, or poster, or over any radio or  
8 television station, or in any other way, an advertisement,  
9 announcement, or statement containing any assertion,  
10 representation, or statement with respect to any person in the  
11 conduct of the person's insurance business, which is untrue,  
12 deceptive, or misleading.
- 13 (3) Making, publishing, disseminating, or circulating, directly or  
14 indirectly, or aiding, abetting, or encouraging the making,  
15 publishing, disseminating, or circulating of any oral or written  
16 statement or any pamphlet, circular, article, or literature which is  
17 false, or maliciously critical of or derogatory to the financial  
18 condition of an insurer, and which is calculated to injure any  
19 person engaged in the business of insurance.
- 20 (4) Entering into any agreement to commit, or individually or by  
21 a concerted action committing any act of boycott, coercion, or  
22 intimidation resulting or tending to result in unreasonable  
23 restraint of, or a monopoly in, the business of insurance.
- 24 (5) Filing with any supervisory or other public official, or making,  
25 publishing, disseminating, circulating, or delivering to any person,  
26 or placing before the public, or causing directly or indirectly, to  
27 be made, published, disseminated, circulated, delivered to any  
28 person, or placed before the public, any false statement of  
29 financial condition of an insurer with intent to deceive. Making  
30 any false entry in any book, report, or statement of any insurer  
31 with intent to deceive any agent or examiner lawfully appointed  
32 to examine into its condition or into any of its affairs, or any  
33 public official to which such insurer is required by law to report,  
34 or which has authority by law to examine into its condition or into  
35 any of its affairs, or, with like intent, willfully omitting to make a  
36 true entry of any material fact pertaining to the business of such  
37 insurer in any book, report, or statement of such insurer.
- 38 (6) Issuing or delivering or permitting agents, officers, or  
39 employees to issue or deliver, agency company stock or other  
40 capital stock, or benefit certificates or shares in any common law  
41 corporation, or securities or any special or advisory board  
42 contracts or other contracts of any kind promising returns and  
43 profits as an inducement to insurance.
- 44 (7) Making or permitting any of the following:
- 45 (A) Unfair discrimination between individuals of the same  
46 class and equal expectation of life in the rates or assessments  
47 charged for any contract of life insurance or of life annuity or  
48 in the dividends or other benefits payable thereon, or in any  
49 other of the terms and conditions of such contract; however, in  
50 determining the class, consideration may be given to the  
51 nature of the risk, plan of insurance, the actual or expected

1 expense of conducting the business, or any other relevant  
2 factor.

3 (B) Unfair discrimination between individuals of the same  
4 class involving essentially the same hazards in the amount of  
5 premium, policy fees, assessments, or rates charged or made  
6 for any policy or contract of accident or health insurance or in  
7 the benefits payable thereunder, or in any of the terms or  
8 conditions of such contract, or in any other manner whatever;  
9 however, in determining the class, consideration may be given  
10 to the nature of the risk, the plan of insurance, the actual or  
11 expected expense of conducting the business, or any other  
12 relevant factor.

13 (C) Excessive or inadequate charges for premiums, policy  
14 fees, assessments, or rates, or making or permitting any unfair  
15 discrimination between persons of the same class involving  
16 essentially the same hazards, in the amount of premiums,  
17 policy fees, assessments, or rates charged or made for:

18 (i) policies or contracts of reinsurance or joint reinsurance,  
19 or abstract and title insurance;

20 (ii) policies or contracts of insurance against loss or damage  
21 to aircraft, or against liability arising out of the ownership,  
22 maintenance, or use of any aircraft, or of vessels or craft,  
23 their cargoes, marine builders' risks, marine protection and  
24 indemnity, or other risks commonly insured under marine,  
25 as distinguished from inland marine, insurance; or

26 (iii) policies or contracts of any other kind or kinds of  
27 insurance whatsoever.

28 However, nothing contained in clause (C) shall be construed to  
29 apply to any of the kinds of insurance referred to in clauses (A)  
30 and (B) nor to reinsurance in relation to such kinds of insurance.  
31 Nothing in clause (A), (B), or (C) shall be construed as making or  
32 permitting any excessive, inadequate, or unfairly discriminatory  
33 charge or rate or any charge or rate determined by the department  
34 or commissioner to meet the requirements of any other insurance  
35 rate regulatory law of this state.

36 (8) Except as otherwise expressly provided by law, knowingly  
37 permitting or offering to make or making any contract or policy  
38 of insurance of any kind or kinds whatsoever, including but not in  
39 limitation, life annuities, or agreement as to such contract or  
40 policy other than as plainly expressed in such contract or policy  
41 issued thereon, or paying or allowing, or giving or offering to pay,  
42 allow, or give, directly or indirectly, as inducement to such  
43 insurance, or annuity, any rebate of premiums payable on the  
44 contract, or any special favor or advantage in the dividends,  
45 savings, or other benefits thereon, or any valuable consideration  
46 or inducement whatever not specified in the contract or policy; or  
47 giving, or selling, or purchasing or offering to give, sell, or  
48 purchase as inducement to such insurance or annuity or in  
49 connection therewith, any stocks, bonds, or other securities of any  
50 insurance company or other corporation, association, limited  
51 liability company, or partnership, or any dividends, savings, or

1 profits accrued thereon, or anything of value whatsoever not  
2 specified in the contract. Nothing in this subdivision and  
3 subdivision (7) shall be construed as including within the  
4 definition of discrimination or rebates any of the following  
5 practices:

6 (A) Paying bonuses to policyholders or otherwise abating their  
7 premiums in whole or in part out of surplus accumulated from  
8 nonparticipating insurance, so long as any such bonuses or  
9 abatement of premiums are fair and equitable to policyholders  
10 and for the best interests of the company and its policyholders.

11 (B) In the case of life insurance policies issued on the  
12 industrial debit plan, making allowance to policyholders who  
13 have continuously for a specified period made premium  
14 payments directly to an office of the insurer in an amount  
15 which fairly represents the saving in collection expense.

16 (C) Readjustment of the rate of premium for a group insurance  
17 policy based on the loss or expense experience thereunder, at  
18 the end of the first year or of any subsequent year of insurance  
19 thereunder, which may be made retroactive only for such  
20 policy year.

21 (D) Paying by an insurer or insurance producer thereof duly  
22 licensed as such under the laws of this state of money,  
23 commission, or brokerage, or giving or allowing by an insurer  
24 or such licensed insurance producer thereof anything of value,  
25 for or on account of the solicitation or negotiation of policies  
26 or other contracts of any kind or kinds, to a broker, an  
27 insurance producer, or a solicitor duly licensed under the laws  
28 of this state, but such broker, insurance producer, or solicitor  
29 receiving such consideration shall not pay, give, or allow  
30 credit for such consideration as received in whole or in part,  
31 directly or indirectly, to the insured by way of rebate.

32 (9) Requiring, as a condition precedent to loaning money upon the  
33 security of a mortgage upon real property, that the owner of the  
34 property to whom the money is to be loaned negotiate any policy  
35 of insurance covering such real property through a particular  
36 insurance producer or broker or brokers. However, this  
37 subdivision shall not prevent the exercise by any lender of the  
38 lender's right to approve or disapprove of the insurance company  
39 selected by the borrower to underwrite the insurance.

40 (10) Entering into any contract, combination in the form of a trust  
41 or otherwise, or conspiracy in restraint of commerce in the  
42 business of insurance.

43 (11) Monopolizing or attempting to monopolize or combining or  
44 conspiring with any other person or persons to monopolize any  
45 part of commerce in the business of insurance. However,  
46 participation as a member, director, or officer in the activities of  
47 any nonprofit organization of insurance producers or other  
48 workers in the insurance business shall not be interpreted, in  
49 itself, to constitute a combination in restraint of trade or as  
50 combining to create a monopoly as provided in this subdivision  
51 and subdivision (10). The enumeration in this chapter of specific

1 unfair methods of competition and unfair or deceptive acts and  
 2 practices in the business of insurance is not exclusive or  
 3 restrictive or intended to limit the powers of the commissioner or  
 4 department or of any court of review under section 8 of this  
 5 chapter.

6 (12) Requiring as a condition precedent to the sale of real or  
 7 personal property under any contract of sale, conditional sales  
 8 contract, or other similar instrument or upon the security of a  
 9 chattel mortgage, that the buyer of such property negotiate any  
 10 policy of insurance covering such property through a particular  
 11 insurance company, insurance producer, or broker or brokers.  
 12 However, this subdivision shall not prevent the exercise by any  
 13 seller of such property or the one making a loan thereon of the  
 14 right to approve or disapprove of the insurance company selected  
 15 by the buyer to underwrite the insurance.

16 (13) Issuing, offering, or participating in a plan to issue or offer,  
 17 any policy or certificate of insurance of any kind or character as  
 18 an inducement to the purchase of any property, real, personal, or  
 19 mixed, or services of any kind, where a charge to the insured is  
 20 not made for and on account of such policy or certificate of  
 21 insurance. However, this subdivision shall not apply to any of the  
 22 following:

23 (A) Insurance issued to credit unions or members of credit  
 24 unions in connection with the purchase of shares in such credit  
 25 unions.

26 (B) Insurance employed as a means of guaranteeing the  
 27 performance of goods and designed to benefit the purchasers  
 28 or users of such goods.

29 (C) Title insurance.

30 (D) Insurance written in connection with an indebtedness and  
 31 intended as a means of repaying such indebtedness in the  
 32 event of the death or disability of the insured.

33 (E) Insurance provided by or through motorists service clubs  
 34 or associations.

35 (F) Insurance that is provided to the purchaser or holder of an  
 36 air transportation ticket and that:

37 (i) insures against death or nonfatal injury that occurs during  
 38 the flight to which the ticket relates;

39 (ii) insures against personal injury or property damage that  
 40 occurs during travel to or from the airport in a common  
 41 carrier immediately before or after the flight;

42 (iii) insures against baggage loss during the flight to which  
 43 the ticket relates; or

44 (iv) insures against a flight cancellation to which the ticket  
 45 relates.

46 (14) Refusing, because of the for-profit status of a hospital or  
 47 medical facility, to make payments otherwise required to be made  
 48 under a contract or policy of insurance for charges incurred by an  
 49 insured in such a for-profit hospital or other for-profit medical  
 50 facility licensed by the state department of health.

51 (15) Refusing to insure an individual, refusing to continue to issue

insurance to an individual, limiting the amount, extent, or kind of coverage available to an individual, or charging an individual a different rate for the same coverage, solely because of that individual's blindness or partial blindness, except where the refusal, limitation, or rate differential is based on sound actuarial principles or is related to actual or reasonably anticipated experience.

(16) Committing or performing, with such frequency as to indicate a general practice, unfair claim settlement practices (as defined in section 4.5 of this chapter).

(17) Between policy renewal dates, unilaterally canceling an individual's coverage under an individual or group health insurance policy solely because of the individual's medical or physical condition.

(18) Using a policy form or rider that would permit a cancellation of coverage as described in subdivision (17).

(19) Violating IC 27-1-22-25, IC 27-1-22-26, or IC 27-1-22-26.1 concerning motor vehicle insurance rates.

(20) Violating IC 27-8-21-2 concerning advertisements referring to interest rate guarantees.

(21) Violating IC 27-8-24.3 concerning insurance and health plan coverage for victims of abuse.

(22) Violating IC 27-8-26 concerning genetic screening or testing.

(23) Violating IC 27-1-15.6-3(b) concerning licensure of insurance producers.

(24) Violating IC 27-1-38 concerning depository institutions.

(25) Violating IC 27-8-28-17(c) or IC 27-13-10-8(c) concerning the resolution of an appealed grievance decision.

(26) Violating IC 27-8-5-2.5(e) through IC 27-8-5-2.5(j) or IC 27-8-5-19.2.

(27) Violating IC 27-2-21 concerning use of credit information.

(28) Violating IC 27-4-9-3 concerning recommendations to ~~senior~~ consumers.

**(29) Engaging in dishonest or predatory insurance practices in marketing or sales of insurance to members of the United States Armed Forces as:**

**(A) described in the federal Military Personnel Financial Services Protection Act, P.L.109-290; or**

**(B) defined in rules adopted under subsection (b).**

**(b) Except with respect to federal insurance programs under Subchapter III of Chapter 19 of Title 38 of the United States Code, the commissioner may, consistent with the federal Military Personnel Financial Services Protection Act (P.L.109-290), adopt rules under IC 4-22-2 to:**

**(1) define; and**

**(2) while the members are on a United States military installation or elsewhere in Indiana, protect members of the United States Armed Forces from;**

**dishonest or predatory insurance practices.**

SECTION 2. IC 27-4-9-2, AS ADDED BY P.L.138-2005, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



JANUARY 1, 2008]: Sec. 2. As used in this chapter, "~~senior~~" "consumer" means an individual who is ~~at least sixty-five (65) years of age~~. **receives a recommendation to purchase or exchange an annuity that results in the recommended purchase or exchange.**

SECTION 3. IC 27-4-9-3, AS ADDED BY P.L.138-2005, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 3. (a) An insurance producer, or an insurer in a case in which an insurance producer is not involved, shall not recommend to a ~~senior~~ consumer the:

- (1) purchase of an annuity; or
- (2) exchange of an annuity that results in another insurance transaction;

that is unsuitable for the ~~senior~~ consumer.

(b) A determination regarding whether a purchase or an exchange under subsection (a) is unsuitable for a ~~senior~~ consumer must be made:

- (1) based on the facts disclosed by the ~~senior~~ consumer concerning the ~~senior~~ consumer's:

- (A) investments and other insurance products; and
- (B) financial situation and needs; and

- (2) according to the rule adopted under section 4 of this chapter.

SECTION 4. IC 27-4-9-4, AS ADDED BY P.L.138-2005, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 4. **(a)** The department shall adopt ~~a rule~~ **rules** under IC 4-22-2 to ~~establish a method for making determinations as to whether a purchase or an exchange described in section 3 of this chapter is unsuitable for a senior consumer~~. **implement this chapter.**

**(b) The rules adopted under subsection (a) must set forth the duties that apply to an insurer or an insurance producer in determining whether reasonable grounds exist to believe that a recommendation to purchase or exchange an annuity is suitable for a consumer to whom the recommendation is made based on the facts disclosed by the consumer concerning the consumer's investments, other insurance products, and financial situation and needs.**

(Reference is to ESB 171 as printed April 3, 2007.)

**Conference Committee Report**  
**on**  
**Engrossed Senate Bill 171**

**S**igned by:

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Senator Delph  
Chairperson

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Representative GiaQuinta

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Senator Simpson

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Representative Ripley

**Senate Conferees**

**House Conferees**